IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.639 OF 2005

Sagar Ramchandra Ghodake ..Appellant

Vs.

State of Maharashtra ..Respondent

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Mr.Shekhar Ingawale i/b Sudatta
Patil & Kedar Patil for Appellant
Mr.V.B.Konde-Deshmukh A.P.P. for the State
Smt.Kunti Desai P.W.2 present in person

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CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : AUGUST 24,2005

P.C.

1. Heard Mr.Shekhar Ingawale, learned advocate for the appellant, Mr.V.B.Konde-Deshmukh, learned A.P.P. for the State and Smt.Kunti Desai P.W.2 who is present in person.

2. On the last occasion, Smt.Kunti Desai-Ghodake appeared before this Court and she has stated that she has got married to the present appellant-Sagar Ramchandra Ghodake after the incident and she is

residing happily with the appellant. She has further stated that the complaint was falsely lodged by her family members against the present appellant as they were opposed to her marriage with the appellant. She has further stated that appellant may be acquitted or sentence may be reduced to the period undergone by the appellant. Mrs.Kunti Desai-Ghodake has further stated that during the trial also, she has stated all these facts and she had denied the entire statement recorded by the police and denied the entire allegations made against the appellant.

3. Mrs.Suchita Krishnaji Purohit (P.W.1) who is the other injured person in the said case, has filed affidavit and she has stated therein that the appellant Sagar Ghodake is already married to Smt.Kunti Desai and they are staying together and living happy married life. She has denied the entire allegations made against the appellant so also before the trial Court. During the trial also, Mrs.Suchita Purohit has not supported the prosecution case and she has denied the entire allegations made against the appellant.

4. Smt.Kunti Desai submitted that she is married to the appellant and she is staying with him and if the appellant is sent back to jail, her entire life will be ruined and she would be on the streets, hence, she has prayed that sentence of imprisonment imposed on the appellant be reduced to the period undergone by him.

5. In the present case, the appellant has been convicted under Sections 326, 366 and 452 of IPC. Under Sections 326 and 366 of IPC, he has been sentenced to R.I. for two years and fine of Rs.5000/- and under Section 452 of IPC, he is sentenced to R.I. for six months and fine of Rs.300/-. It is an admitted fact that the fine amount has been deposited. The learned advocate for the appellant states that the order of conviction is not being challenged but he is restricting his arguments only to the quantum of sentence. He has submitted that in view of the affidavit of Smt.Kunti Desai P.W.2 and P.W.1 Mrs.Suchita Purohit and looking to the facts and circumstances of this case, the sentence imposed on

the appellant be reduced to the period undergone by him.

6. In view of the facts of this case, the learned A.P.P. has no objection to the sentence being reduced to the period undergone by the appellant. In this view of the matter, I am inclined to reduce the sentence of imprisonment.

7. The conviction of the appellant under Sections 326, 366 and 452 of IPC is maintained, however, the sentence is reduced to the period undergone by the appellant.

8. Appeal is partly allowed. Liberty is granted to the appellant to prefer a separate application for return of muddemal property before the trial Court.

[V.K.TAHILRAMANI,J.]